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7                   **UNITED STATES DISTRICT COURT**  
8                   **DISTRICT OF NEVADA**  
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10 MARLON D. COLLINS,

11                 Plaintiff,

12 v.

13 BRIAN E. WILLIAMS, SR., *et al.*,

14                 Defendants.

Case No. 2:10-CV-01967-KJD-PAL

**ORDER**

16                 Before the Court is Defendants' Motion for Partial Dismissal (#11). Plaintiff filed an  
17 opposition (#14) and Defendants replied (#17).

18 **I. Background**

19 Plaintiff is currently in the custody of the Nevada Department of Corrections and is  
20 incarcerated at Stewart Conservation Camp in Carson City. Plaintiff alleges that while at Southern  
21 Desert Correctional Center ("SDCC") he filed a grievance about his cell mate. Plaintiff believed that  
22 filing this grievance exposed him to danger and requested a transfer to another institution. Prison  
23 officials placed Plaintiff in administrative segregation. Later, Plaintiff's request for transfer was  
24 denied. Plaintiff avers that Defendants refused to release him from administrative segregation unless  
25 he signed a waiver of liability. Plaintiff declined to sign the waiver and was held in indefinite  
26 administrative segregation. Plaintiff claims, *inter alia*, that the denial of his request for transfer,

1 indefinite administrative segregation, and consequent loss of good time credits, violated his Eighth  
2 Amendment right to be free from cruel and unusual punishment. Defendants seek to dismiss this  
3 claim.

4 II. Discussion

5 A. Legal Standard for Motion to Dismiss

6 Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a plaintiff's complaint for "failure  
7 to state a claim upon which relief can be granted." A properly pled complaint must provide "a short  
8 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.  
9 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require  
10 detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation  
11 of the elements of a cause of action." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Papasan  
12 v. Allain, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise above the  
13 speculative level." Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint  
14 must contain sufficient factual matter to "state a claim to relief that is plausible on its face." Iqbal,  
15 129 S. Ct. at 1949 (internal citation omitted).

16 In Iqbal, the Supreme Court recently clarified the two-step approach district courts are to  
17 apply when considering motions to dismiss. First, the Court must accept as true all well-pled factual  
18 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.  
19 Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory  
20 statements, do not suffice. Id. at 1949. Second, the Court must consider whether the factual  
21 allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially  
22 plausible when the plaintiff's complaint alleges facts that allow the court to draw a reasonable  
23 inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint  
24 does not permit the court to infer more than the mere possibility of misconduct, the complaint has  
25 "alleged—but not shown—that the pleader is entitled to relief." Id. (internal quotation marks  
26

1 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,  
2 plaintiff's complaint must be dismissed. Twombly, 550 U.S. at 570.

3 Courts must liberally construe the pleadings of *pro se* parties. See United States v. Eatinger,  
4 902 F.2d 1383, 1385 (9th Cir. 1990). However, *pro se* litigants must supply a minimum factual basis  
5 for the claims they assert against defendants. Brazil v. U.S. Dept. of Navy, 66 F.3d 193, 199 (9th  
6 Cir. 1995).

7 B. Eighth Amendment Violation

8 A prison official violates the Eighth Amendment when: (1) the condition of confinement  
9 objectively poses a substantial risk of serious harm (extreme deprivation); and (2) the prison  
10 official knows of the substantial risk and ignores it (deliberate indifference or criminal  
11 recklessness). Farmer v. Brennan, 511 U.S. 825, 834-37 (1994); Hudson v. McMillian, 503 U.S.  
12 1, 9 (1992). “[E]xtreme deprivations are required to make out a[n] [Eighth Amendment] conditions  
13 of confinement claim. Hudson, 503 U.S. at 9.

14 Plaintiff has not pled facts sufficient to state a claim for a violation of the Eighth  
15 Amendment. Defendants removed Plaintiff from a potentially dangerous situation. The crux of his  
16 claim is that Defendants subjected him to cruel and unusual punishment by conditioning his release  
17 to general population on his signing of a waiver of liability. This does not constitute an extreme  
18 deprivation. A prisoner does not have a constitutional right to be housed at a particular institution or  
19 to receive a particular security classification. Neal v. Shimoda, 131 F.3d 818, 828 (9th Cir. 1997).  
20 Nor does administrative segregation constitute cruel and unusual punishment. Anderson v. County  
21 of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995) (holding that administrative segregation for an  
22 indeterminate period “is within the terms of confinement ordinarily contemplated by a sentence”).  
23 Plaintiff has failed to show make the required showing of extreme deprivation. Accordingly, he fails  
24 to state a claim for violation of the Eighth Amendment.

### C. Good Time Credits

Plaintiff seeks restoration of good time credits. (Compl. at 9.) Loss of good time credits is a challenge to the fact or duration of confinement. Relief of the type requested by Plaintiff may only be obtained in federal court through a writ of habeas corpus. Wolff v. McDonnell, 418 U.S. 539, 554 (1974). Accordingly, Plaintiff fails to state a claim relating to good time credits.

#### D. Qualified Immunity

The defense of qualified immunity protects “government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). Qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” Officers can have a reasonable, but mistaken, belief about the facts or about what the law requires in a certain situation. Saucier v. Katz, 533 U.S. 194, 202 (2001); Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1049 (9th Cir. 2002).

Here, the Court has determined that Plaintiff failed to state a claim for a violation of the Eighth Amendment. The Complaint also fails to show that Defendants knowingly violated the Eighth Amendment. Accordingly, Defendants are entitled to qualified immunity on the Eighth Amendment claim.

### III. Conclusion

**IT IS HEREBY ORDERED** that Defendants' Motion for Partial Dismissal (#11) is  
**GRANTED.**

DATED this 16th day of November 2011.



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Kent J. Dawson  
United States District Judge